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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,703	01/15/2004	Robert E. Platt	1522006US1AP	8439
27542	7590	08/11/2005	EXAMINER	
SAND & SEBOLT AEGIS TOWER, SUITE 1100 4940 MUNSON STREET, NW CANTON, OH 44718-3615			CHAPMAN, JEANETTE E	
			ART UNIT	PAPER NUMBER
			3635	

DATE MAILED: 08/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/759,703	PLATT, ROBERT E.	
	Examiner	Art Unit	
	Chapman E Jeanette	3635	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on MAY 5, 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-25, 26-30 is/are pending in the application.
- 4a) Of the above claim(s) 23-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 11-13, 15-21 and 26-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

S.O.O

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7, 11-13 and 16-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Williams (4302962). Williams discloses a leveling/inclinometer device comprising

- A base 10/12 comprising
  - A top edge
  - A bottom edge
  - Front and back surfaces
  - An aperture 19 proximate the top edge; see figures 2 and 5
  - The aperture 19 extends from the front surface of the base 12 to the back surface; see figure 5
  - L-shape cross section and the member is clearly capable to engage a corner of a substantially rectangular or square or post
  - Two legs 10/14 and 12 disposed at 90 degrees to each other
    - Each leg 10 and 12 has an arm 14 and 16 pivotally mounted; arm 14 is pivotal by element 34 and 16 is pivotal by element 18

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- Each leg 10 and 12 includes a marker; marker 36 is on 10 and marker 40 is on 12
- Each leg includes a front and back surfaces; the back surfaces are capable of abutting a post
- Each leg defines an aperture that extends inwardly from the front to the back
- Each arm 14 and 16 is connecting to a corresponding leg by a pin 34 and 16
- Only one arm 16 includes a v-shaped lower end; however, the ends of the arm can assume any shape commensurate with the intended use, function and purpose of the device
- At least one arm 16 pivotally mounted to the base
  - The arm is mounted onto the base by a pin 18 that is received in the aperture 19
- An indicator 38 on said arm comprising
  - A v-shaped lower end of the arm that terminates in an apex; see figure 1
  - The apex aligns with the marker 40 when the structural device is vertical and does not align when the structural device is not vertical
- A marker 36/40 disposed on the base comprising
  - The marker comprises a detent 36 that projects from the front surface of the base 10
  - The detent includes a second apex shown in figure 4

- The apex of the arm align with the second apex of the detent when the structural device is vertical and does not align with the second apex when the structural device is not vertical; see abstract and column 1, lines 40-55
- A symbol
- Alignment of the indicator with said marker indicates a structural device is vertical and non-alignment of the indicator with the marker indicates that a structural device is not vertical

Williams discloses all of the claimed elements of the leveling device and hence can be used with any structural device needing to be leveled. The claims do not tie any structural limitations to a post.

### **35 USC 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8, 15, 26-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams in view of Clearly (Great Britain 2373049). Clearly discloses employing a leveling device with a post as the base. Clearly shows the leveling device attached to the post by adhesive. It would have been obvious to one of ordinary skill in the art to employ any compatible leveling device with a post as taught by Clearly.

For other limitations in claims 26-30, see 102 rejection above.

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Claims 9-10, 14, 22<sup>25</sup> are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams in view of Clearly and further in view of Elsasser (6467756). Elsasser discloses a post with a core 16 and a sleeve 14. If the screw 19 were unscrewed the sleeve would be removable. Clearly shows a leveling assembly mounted onto a post. It would have been obvious to one of ordinary skill in the art to join the leveling device to a post and to permanently secure it to a post as shown by the two secondary references in order to provide a further need and use for leveling devices.

Color coating is a popular manner of distinguishing one element from another and one of ordinary skill in the art would have known any color coding methods to make the marker and indicator more easily readable. Color coding is well within the scope of the cited prior art inventions.

Arguments are moot given the new ground of rejection

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be

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calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chapman E Jeanette whose telephone number is 571272-6841. The examiner can normally be reached on Mon.-Fri, 8:30-6:00, every other fri. off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Friedman Carl can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jeanette Chapman  
Primary Examiner